

Date: 12/20/04

December 20, 2004

Mr. Cy Oggins
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

Re: Draft EIS/EIR for the Cabrillo Port LNG Deepwater Port

Dear Mr. Oggins:

Thank you for providing the City with the opportunity to review the Draft EIR/EIS for the Cabrillo Port Liquefied Natural Gas Deepwater Port. The City is very concerned with ensuring that environmental resources, including the Santa Clara River, are protected and that the project will not result in adverse impacts to residents.

Our comments are primarily focused on the adequacy of the assessment of the potential impacts of the proposed pipeline through Santa Clarita, and the adequacy of the mitigation measures proposed for those impacts on air quality, biological resources, cultural resources, and traffic. Additional comments regarding unavoidable significant adverse impacts and growth inducing impacts are also provided. In addition, we would like to note the following general comments:

General Comments

- The assessment of many of the potential impacts is fairly cursory and is not of sufficient depth to identify alternatives or mitigation measures to reduce impacts. This is a large and unique project, and at a minimum should receive the thorough and detailed analysis typically found in project EIRs.
- Mitigation measures should be written to specify why (the objective), what (specifics, performance standards, contingencies), who (agency/person responsible for implementing the mitigation and for monitoring compliance with the mitigation), where (location), and when (schedule).
- The findings of less than significant impact after mitigation, in many cases relies on assumptions regarding either future studies or the ability of as yet undefined and improperly deferred mitigation measures to mitigate impacts to a level which is less than significant. This is unacceptable under CEQA. The leading case on deferred mitigation is *Sundstrom v. County of Mendocino* (202 Cal.App.3d 296). *Gentry v. City of Murrieta* (36 Cal.App.4th 1359) also

L014-1

L014-2

L014-3

L014-1

This letter is substantially the same as 2004 Comment Letter L011.

Both NEPA and the CEQA require the consideration of alternatives to a proposed project. A lead agency's lack of jurisdiction over a potential alternative is one factor that it may consider in determining if a potential alternative is feasible, reasonable, and merits detailed study in an EIS/EIR. Whether a potential alternative is purely hypothetical or speculative, or whether the potential alternative can be accomplished in a successful manner in a reasonable period of time are additional factors the lead agency may consider in assessing the feasibility and reasonability of the potential alternative.

From a NEPA perspective, while a Federal agency must analyze "a range of reasonable alternatives" (as opposed to any and all possible alternatives), and may be required to analyze an alternative that is outside the capability of an applicant and that is outside the jurisdiction of the agency, the threshold question in determining whether to analyze any alternative is whether that alternative would be a "reasonable" alternative. Reasonable alternatives include those that are practical and feasible from the technical and economic standpoint and using common sense (CEQ 40 Questions; #2a).

To provide for an effective "hard look" at the alternatives the agency must limit the range to those alternatives that will best serve the environmental review process, and not needlessly examine and discuss in depth remote or speculative alternatives that that discussion does not facilitate a better decision making process. As stated in 40 CFR 1502.14(a), the EIS should "rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated."

Section 15126.6(a) of the State CEQA Guidelines states, in part, "[t]he Lead Agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives." The California Supreme Court in the *Citizens of Goleta Valley* case recognized that while an agency's jurisdiction was only one factor to consider, "[t]he law does not require in-depth review of alternatives that cannot be realistically considered and successfully accomplished." In addition, the discussion in section 15364 in the State CEQA Guidelines states that "[t]he lack of legal powers of an agency to use in imposing an alternative or mitigation measure may be as great a limitation as any economic, environmental, social, or technological

factor."

Chapter 3 discusses energy conservation, efficiency, and renewable sources of energy, and explains why these potential alternatives were not studied in detail in the EIS/EIR. The range of alternatives studied in detail is reasonable and conforms to NEPA and the CEQA requirements.

L014-2

The Project has been extensively modified since publication of the October 2004 Draft EIS/EIR and the impacts and mitigation measures have changed accordingly.

The EIS/EIR contains substantial mitigation to avoid or reduce potential significant impacts to a level below significance criteria.

The EIS/EIR identifies and assigns significance to all levels of impacts as required by NEPA. The EIS/EIR also identifies unavoidable significant (Class I) impacts. The Administrator of MARAD under the authority of the Deepwater Port Act, the California State Lands Commission, and the Governor of California have to balance the benefits of the Project against its unavoidable environmental risks. In accordance with section 15093 of the State CEQA Guidelines, the CSLC would have to make a Statement of Overriding Considerations addressing Class I impacts prior to approval of the proposed pipeline lease application.

The lead Federal and State agencies share the responsibility to ensure that mitigation measures are implemented. Table 6.1-1 in Chapter 6 is the basis for the Mitigation Monitoring Program, which would be implemented, consistent with section 15097(a) of the State CEQA Guidelines, to ensure that each mitigation measure is incorporated into Project design, construction, operation, and maintenance activities.

L014-3

Mitigation measures for each significant impact are stipulated throughout the EIS/EIR and those that require future products, e.g., the Biological Resource Mitigation Implementation and Monitoring Plan, contain a listing of topics that must be addressed. These requirements are performance standards by which such plans would be evaluated when it is practical to prepare them. Under the CEQA, mitigation measures "may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specific way." (State CEQA Guidelines section 15126.4(b)). NEPA does not require performance measures for proposed mitigation but only requires

mitigation measures to be identified (40 CFR 1502.14(f) and 1502.16(h)).

The lead Federal and State agencies share the responsibility to ensure that mitigation measures are implemented. Table 6.1-1 in Chapter 6 is the basis for the Mitigation Monitoring Program, which would be implemented, consistent with section 15097(a) of the State CEQA Guidelines, to ensure that each mitigation measure is incorporated into Project design, construction, operation, and maintenance activities.

See response to Comments L014-5 through L014-11.

provides useful guidance on deferred mitigation. As detailed in those cases, requiring a future study, assuming the study will be able to devise adequate mitigation measures, and incorporating the study's as yet undefined mitigation measures, is "counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process." Requiring compliance with the recommendations of study which has yet to be performed has been held by the court to be inadequate, and an example of improper deferral of mitigation. We would also note that an analysis alone is not a mitigation.

L014-3
 cont'd

In order to avoid improperly deferring mitigation it is necessary to: identify whether a significant impact occurs and, if so, to demonstrate that mitigation is feasible and commit to developing mitigations which meet a specific performance criteria (which yields less than significant impacts). If the performance standard can not be met, an unmitigated impact, which was not identified in the EIR would result, and the mitigation should require that the project should be halted pending further environmental review. Also, mitigation measures should not contain language such as "avoid to the extent possible", as such language does not provide any assurance that the level of avoidance will be adequate to reduce impacts to less than significant levels.

L014-4

The following are examples of either improperly deferred impact assessment or improperly deferred mitigation measures: MM TerrBio-3b, MM AIR-1b, AMM TerBio-1a, AMM TerrBio-2a, MM TerrBio-6b, AMM Cul-3b to AMM Cul-3e (pedestrian survey?), MM PS-7a and MM PS-7b.

- It is unclear that specified mitigations would reduce the following impacts to less than significant:
 - AMM TerBio-1a (fails to define the types of measures or the standard which must be met);
 - TerrBio-2 (conducting a survey and an awareness program to explain endangered species law, doesn't reduce or avoid impacts – need to define specific actions that will be taken, and need to identify areas where there is the potential for impacts to exist).
 - TerrBio-3 (unclear if the standard of "to the extent possible" is sufficient to reduce impacts to less than significant levels, what will be done with banked seeds, the extent of potential impacts, or the feasibility of mitigation).
 - TerrBio-4 (the extent of impacts and the feasibility of mitigation measures has yet to be defined).
 - TerrBio-6 (future studies are not mitigation and AMM TerBio-6a would appear to allow for impacts).
 - TerBio-9 (Mitigation measure MM TerrBio-9c as described in the summary table does not meet the requirements of the Migratory Bird Act; the potential for impacts to migratory birds remains and has not been identified as a potential impact).

L014-5

L014-6

L014-7

L014-8

L014-9

L014-10

L014-4

See the response to Comment L014-3.

L014-5

The text in Section 4.8.4 has been revised. See Section 4.1 for an explanation of Applicant measures.

L014-6

Subsequent to the completion of the October 2004 Draft EIS/EIR, the Applicant completed surveys of the pipeline rights-of-way in accordance with California Department of Fish and Game protocol. Surveys included a wetland delineation survey that meets the California Coastal Commission and California Department of Fish and Game wetland definition, botanical and wildlife surveys for Federal and State listed species, a wintering waterfowl survey, a burrowing owl survey, and surveys to determine whether any oak trees would need to be removed during construction. Section 4.8 has been updated with the results of these surveys, and Section 4.8.4 contains updated mitigation measures. Additional preconstruction plant and wildlife surveys, specific to the final construction timeline and designated pipeline alignment, would be completed for special status species, federally listed species, or California protected species specified by the USFWS or the CDFG, to minimize the potential for causing mortality of local wildlife. However, for purposes of the impact analyses and resultant mitigation, all relevant species are presumed to exist in the vicinity of the proposed Project.

L014-7

The mitigation measure referring to seed bank retention has been deleted and the remaining mitigation measures concerning vegetation removal (TerrBio-2) have been clarified.

L014-8

See the response to Comment L014-6. The discussion of impacts on wetlands and waters of the U.S. (TerrBio-3) in Section 4.8.4 has been updated.

L014-9

See the response to Comment L014-6. The Applicant measure previously identified as AM TerrBio-6a, Minimize Disturbance at Water Crossings, is discussed under Impact BioMar-1 in Section 4.7.4.

L014-10

The discussion of impacts on wildlife under Impact TerrBio-5 in Section 4.8.4 has been revised. Section 4.8.3 states that the

Project would not impede or interfere with movement or migration of wildlife.

- o AMM Cul-2a (unclear if the standard of "to the extent possible" is sufficient to reduce impacts to less than significant levels). L014-11
- o NOI-4 (mitigations would require monitoring, but the standard which must be met is not specified and it is not clear what action would be taken if monitoring indicated that the standard was exceeded). L014-12

The potential for unmitigated impacts regarding biological resources, cultural resources, and noise, therefore remains.

- The EIR/EIS should include an analysis which addresses each of the significance criteria provided. Not all of the significance criteria are addressed in the document. L014-13
- All of the supporting studies and analysis should either be provided in the Technical Appendices or incorporated by reference in accordance with CEQA standards (i.e. available for review in identified locations). L014-14

Project Description

- Please include information on the depth and width of the excavation required for the various segments of the Line 225 Pipeline Loop, and the other pipeline segments. L014-15

Air Quality

The project includes 7.7 miles of pipeline construction within Santa Clarita and the South Coast Air Quality Management District and would generate 31.1 tons of NOx emissions within Los Angeles County and a total of 171.4 tons of NOx emissions from on-shore construction. In addition, project operations would generate 187 tons per year of NOx, 50.19 of ROC, and 162 of CO. However, according to the EIR/EIS's summary table, the proposed project would not result in any significant unmitigated air quality impacts. L014-16

The EIR/EIS includes the following Significance Criteria, consistent with the general guidance on significance criteria included in the Ventura County Air Quality Assessment Guidelines. However, the EIS/EIR fails to identify or address the more detailed project impact criteria specified by either the SCAQMD or VCAPCD. L014-17

See for example: <http://www.vcapcd.org/pubs/Planning/VCAQGuidelines.pdf> In addition, the analysis does not address all of the significance criteria:

1. Conflicts with or obstructs implementation of any applicable Federal, State or local air quality plan. L014-18

L014-11

AM CULT-2a in Section 4.9.4 has been revised.

L014-12

Section 4.14.4 contains information on noise impact analysis and mitigation. Additional mitigation measures have been added that would require the Applicant to: (1) conduct noise monitoring before beginning construction to establish noise background levels, (2) meet the noise ordinance standards for the area in which construction is occurring, (3) establish a hotline for members of the public to call if they have a noise complaint, and (4) establish procedures to respond to any noise complaints or exceedances of ordinances.

L014-13

Chapter 4 analysis sections have been updated to discuss each and every significance criterion.

L014-14

Additional technical appendices have been included in the Final EIS/EIR. All the documents supplied by the Applicant that are not confidential are on the Federal docket at <http://dms.dot.gov/search/searchFormSimple.cfm>, docket #16877. All other non-copyrighted material is contained in the administrative record.

L014-15

Section 2.7.1.2 addresses this topic.

L014-16

The Project has been modified since issuance of the October 2004 Draft EIS/EIR. Section 4.6.4 contains revised text on this topic.

L014-17

Sections 4.6.3 and 4.6.4 contain revised discussions of air quality significance criteria and impacts, respectively.

L014-18

Section 4.6.4 contains a revised discussion of this topic.

- An analysis of both Air Quality Management Plan Consistency and Conformity is required to determine impacts under this threshold. Consistency requires a demonstration that any growth-inducing impacts of the project (and cumulative development) will not result in an exceedance of the population assumptions used in developing the AQMP. The growth-inducing impact analysis in the EIS/EIR is inadequate. It does not address the ability of existing gas supplies to serve the existing and projected population and whether the additional gas supplies are required to serve the projected population, or whether the new supply could accommodate additional growth, beyond that included in the growth forecasts used in developing the AQMP. L014-18.1
- The EIR/EIS does not contain a Conformity analysis, rather completion of the analysis is a "mitigation measure." The analysis is needed in order to answer the question of whether the project would conflict with any applicable Federal, State or local air quality plan. Since a finding of conformity requires a demonstration that emission can be off-set, the Conformity analysis should include a demonstration (rather than an assumption) that the requisite off-set is feasible. Without demonstration that an off-set is feasible, the potential for impacts remains. L014-18.2
2. Violates any air quality standard or exceeds *de minimis* levels to an existing or projected air quality violation, including normal operational and accidental releases. L014-18.3
- The EIR/EIS fails to include either an analysis which shows that the project (with and without mitigation) is consistent with the SCAQMD and VCAQMD emissions thresholds. The analysis should also address the impact of the project on compliance with State and National Ambient Air Quality standards. Without demonstration that an off-set is feasible, the potential for impacts remains. L014-19
3. Results in a cumulatively considerable net increase in any criteria pollutant for which the Project region is in non-attainment under an applicable Federal or State ambient air quality standard (including releasing emissions that exceed quantitative thresholds for O3 precursors). L014-20
- According to the VCAQMD's Guidelines a project would result in a cumulative impact if it is inconsistent with the AQMP and results in emission of 2 lbs or greater per day of NOX or ROC. The EIR/EIS has yet to demonstrate consistency with the AQMP, and the project would result in NOX and ROC. Without a demonstration of consistency, the potential for impacts remains. L014-20.1

L014-18.1

The Draft General Conformity Determination was issued in March 2006 with a 30-day public comment period. However, based on equipment changes proposed by the Applicant, MARAD and the USCG have determined that the General Conformity Rule does not apply. Appendix G4 contains additional information on this topic. See response to Comment L014-18.3.

L014-18.2

Section 5.5 contains information on growth-inducing impacts.

L014-18.3

In March 2006, the USCG and MARAD solicited public input on a Draft General Conformity Determination, which concluded that NOx emissions generated from Project construction activities in Los Angeles County were subject to the General Conformity Rule. All other Project-related emissions were determined not to be subject to the General Conformity Rule. Subsequent to the issuance of the Conformity Determination, BHPB provided a written commitment that all onshore pipeline construction equipment would, to the extent possible, utilize engines compliant with USEPA Tier 2, 3, or 4 non-road engine standards with Tier 2 being the minimum standard for any engine.

Project emissions were then reanalyzed to assess the potential emission reductions associated with the stated commitment and to reassess the applicability of the General Conformity Rule. The revised General Conformity analysis concluded that all applicable Project emissions would be less than *de minimis* thresholds in both Ventura and Los Angeles Counties and, therefore, not subject to the General Conformity Rule. Based on this conclusion, the USCG and MARAD will not finalize the Draft General Conformity Determination.

Section 4.6.1.3 and Section 4.6.2 contain revised Project emission estimates and a revised discussion of the applicability of the General Conformity Rule to the Project, respectively. Appendix G4 contains a copy of the revised General Conformity analysis.

L014-19

Section 4.6.4 contains a revised discussion of this topic.

L014-20

Section 4.20 contains a revised discussion of this topic.

L014-20.1

Section 4.6.4 compares Project emissions that would occur in

Ventura County with significance criteria used as guidance in determining consistency with Ventura County's Air Quality Management Plan.

4. Exposes the public (especially schools, day care centers, hospitals, retirement homes, convalescent facilities, and residences) to substantial pollutant concentrations that are above acceptable health effects levels.

L014-21

It does not appear that the EIS/EIR contains an analysis of the potential for impacts under this threshold.

5. Produces ammonia levels above odor threshold levels and that create objectionable odors affecting a substantial number of people.

L014-22

The EIR/EIS does include an analysis of the potential for exposure to unhealthful levels of ammonia. The analysis should also include a sentence which addresses odor exposure.

The Air Quality analysis is thus inadequate, and the potential for significant unmitigated air quality impacts remains. The analysis should be revised to address the requirements of the VCAQMD and SCAQMD. The details of the analysis should be included in a technical appendix.

L014-23

Biological Resources

- Given the potential for impacts to protected or endangered species, the EIR/EIS should demonstrate that consultation with CDFG and USFWS has occurred and that these agencies are in agreement with the general conclusions contained in the document and that the agencies do not feel that Section 7 consultation is needed at this time.

L014-24

- Any field surveys conducted for the project and the wetlands delineation report should be included in the technical appendices. It is unclear from the narrative whether any protocol surveys for special status species were conducted (or whether appropriate field surveys, for those species for which protocols have not been established were conducted). Protocol surveys should be conducted as part of the preparation of the Draft EIR/EIS and not deferred until pre-construction. Rather, pre-construction surveys should be conducted, as required by CDFG to insure that such surveys are less than a year old, prior to the start of construction. In the absence of protocol surveys, the potential for impacts to special status species occurs.

L014-25

L014-26

- According to page 4.8-52, preliminary consultation with USFWS identified potential impacts on arroyo toad, stickleback, Least bells' vireo, two species of spineflower, and a number of sea birds. However, there is no evidence in the EIR/EIS that any field work was conducted to assess the presence or absence of these species in the area of potential effect. This is a substantial inadequacy in the document.

L014-21

The Project has been modified since issuance of the October 2004 Draft EIS/EIR. See Section 1.4.2 for a summary of Project changes. Section 4.6.1.3 contains revised information on Project emissions and proposed control measures. Section 4.6.4 discusses the health effects attributed to air pollutants and includes revised impacts and mitigation measures.

L014-22

Sections 4.6.1.3 and 4.6.4 contain updated additional information to clarify the nature of ammonia emissions from FSRU equipment and related air quality impacts.

L014-23

Section 4.6.4 contains information on air quality impacts associated with Project emissions. Appendices G1 through G8 contain detailed information on air quality impact analyses and emissions calculations.

L014-24

Section 4.8 and Appendix I contain information on Section 7 consultation.

L014-25

Space limitations prevent the publishing the wetland delineation reports and maps with the Final EIS/EIR. However, wetland reports and maps should be available through the USACE permitting division.

L014-26

Subsequent to the completion of the October 2004 Draft EIS/EIR, the Applicant completed surveys of the pipeline rights-of-way in accordance with California Department of Fish and Game protocol. Surveys included a wetland delineation survey that meets the California Coastal Commission and California Department of Fish and Game wetland definition, botanical and wildlife surveys for Federal and State listed species, a wintering waterfowl survey, a burrowing owl survey, and surveys to determine whether any oak trees would need to be removed during construction. Section 4.8 has been updated with the results of these surveys, and Section 4.8.4 contains updated mitigation measures. Additional preconstruction plant and wildlife surveys, specific to the final construction timeline and designated pipeline alignment, would be completed for special status species, federally listed species, or California protected species specified by the USFWS or the CDFG, to minimize the potential for causing mortality of local wildlife. However, for purposes of the impact analyses and resultant

mitigation, all relevant species are presumed to exist in the vicinity of the proposed Project.

- The biological resources section fails to identify areas containing proposed critical habitat, including the proposed critical habitat for the California gnatcatcher and the Arroyo Toad. All final and proposed critical habitat in the vicinity of the project should be shown on a figure. Impacts to proposed critical habitat (which is treated in the same manner as designated critical habitat by USFWS) must be identified in the EIR/EIS.
- As shown on the attached figure, the Quigley Valve end portion of the pipeline in Santa Clarita crosses into proposed critical habitat for the California Gnatcatcher. Protocol surveys are required to determine the presence or absence of this species, and thus whether Section 7 consultation is required. In any case, the EIR/EIS must address the potential impact of the project on proposed critical habitat.
- The areas in which the pipeline would cross the Santa Clara River and San Francisquito Creek are within the proposed critical habitat for the Arroyo Toad. The EIR/EIS must therefore address the potential impact of this project on this species.
- There is concern regarding statements such as those on page 4.8-53 which anticipates that "Construction Monitors and fish handlers . . . (would) ensure that (Stickleback) are not within the riverbed at the pipeline crossing, with additional measures to move or block fish from the construction area" and by statements such as those on page 4.8-57 which indicate that "an 80-foot (24-m) ROW would be used on the route, except at the river crossings, where the ROW may require a maximum of 225 feet (69 m)." These statements would appear to anticipate construction within either the Santa Clara River or San Francisquito Creek. Any construction within these two water bodies would result in significant biological resources impacts, which are not identified in the EIR/EIS and would be inconsistent with either the project description or the alternatives. A mitigation measure must be included, requiring that all river crossings occur on existing bridges, and prohibiting construction or other associated activity within the Santa Clara River or San Francisquito Creek. In the absence of such a mitigation measure, a detailed analysis of the magnitude, extent and impacts of any within Santa Clara River or San Francisquito Creek construction, Section 7 consultation, and recirculation of the EIR/EIS to address potential Arroyo Toad and Stickleback impacts would be required. Without either the requested mitigation measure or the specified analysis, consultation and recirculation, the EIR/EIS is legally inadequate.
- The EIR/EIS needs to clearly identify the location and acreage of waters of the United States, wetlands, proposed or designated critical habitat, and key habitat types (including riparian habitat) impacted by the proposed project. The existing discussion is too general, and lacks the specificity in the definition of impacts typically required for project-level EIR/EIS's in the Santa Clarita area.

L014-27

L014-28

L014-29

L014-27

The text and figures in Section 4.8.1 discuss and show potential suitable habitat for the species cited in the comment.

L014-28

Tables 4.18-5 and 4.18-6 in Section 4.18 (Water Quality) describe crossing methods for each waterbody on the proposed Center Road Pipeline and the Line 225 Pipeline Loop.

L014-29

The Applicant has completed a wetland delineation (using Army Corps of Engineers definitions and California Coastal Commission and California Department of Fish and Game wetland definitions where appropriate) identifying wetlands and waters of the United States along the Project pipeline routes and at the proposed metering stations. Section 4.8.4 addresses potential impacts on wetlands. Mitigation measures presented in Section 4.8.4 have been developed to avoid, minimize, or reduce impacts on wetlands and waters of the United States during construction activities. Tables 4.18-5 and 4.18-6 also provide descriptions of the waterbodies, most of which are concrete flood control channels or agricultural drains, along the proposed pipelines and alternatives.

Subsequent to the completion of the October 2004 Draft EIS/EIR, the Applicant completed surveys of the pipeline rights-of-way in accordance with California Department of Fish and Game protocol. Surveys included a wetland delineation survey that meets the California Coastal Commission and California Department of Fish and Game wetland definition, botanical and wildlife surveys for Federal and State listed species, a wintering waterfowl survey, a burrowing owl survey, and surveys to determine whether any oak trees would need to be removed during construction. Section 4.8 has been updated with the results of these surveys, and Section 4.8.4 contains updated mitigation measures. Additional preconstruction plant and wildlife surveys, specific to the final construction timeline and designated pipeline alignment, would be completed for special status species, federally listed species, or California protected species specified by the USFWS or the CDFG, to minimize the potential for causing mortality of local wildlife. However, for purposes of the impact analyses and resultant mitigation, all relevant species are presumed to exist in the vicinity of the proposed Project.

- The EIR/EIS needs to indicate whether the project would result in the loss of any oak trees and provide for mitigation consistent with the City's Oak Tree ordinance. In addition, the document needs to identify whether the project will result in the loss of any other native trees, or trees with aesthetic value.

L014-30
L014-31
- The EIR/EIS should demonstrate that consultation has occurred with CDFG regarding acceptable habitat and other replacement ratios.

L014-32
- Under federal law, only individuals with specific authorization may "take" endangered species. Mitigation Measure TerBio-9 would appear to give "Construction Monitors" authority to move or block Stickleback from the construction area.

L014-33
- In general, because of the non-specific nature of the biological resources discussion, and the failure of the analysis to quantify and locate potential impacts to Waters of the United States and sensitive species, the EIR/EIS fails to define alternatives (routing modifications or refinements) which would reduce or eliminate biological impacts

L014-34
- There is no evidence in the narrative that field surveys were conducted to determine the presence or absence of the species listed in Tables 4.8-5A and 4.8-5B. If field surveys for these species were conducted, the results of the surveys should be included in the Tables. If field surveys were not conducted for these species, the assessment of potential biological resource impacts is legally inadequate.

Cultural Resources

- It appears that the cultural resources assessment is based solely on a records search, and that no field work was conducted, despite the fact that page 4.9-10 indicates that only 75 to 80 percent of the project area was previously surveyed. Field work of the remaining 20 to 25 percent of the areas should be conducted and described in the EIR/EIS. Should any additional sites be discovered, recirculation of the EIR/EIS would be required.

L014-35
- In addition, it does not appear that any field investigation was conducted on known sites within 0.25 miles of the project alignment. No assessment of National or California Register eligibility appears to have been conducted.
- Mitigation measures AMM Cul-3b, 3d and 3e constitute improper deferment of the needed analysis. In addition, identification of actions to mitigate impacts to identified impacts to specific sites has not been provided. Instead the EIR/EIS relies on site avoidance "to the maximum extent feasible" (AMM Cul-2a). Is avoidance feasible, if it requires modification of the route alignment? If not, the mitigation is meaningless. If so, the modified route should be identified and evaluated as an alternative.

L014-36

L014-30

Subsequent to the completion of the October 2004 Draft EIS/EIR, the Applicant completed surveys to determine whether any oak trees would need to be removed during construction. Section 4.8 has been updated with information from these surveys.

L014-31

See the response to Comment L014-30.

L014-32

Appendix I has information on this topic.

L014-33

Section 4.8.4 discusses how impacts on the unarmored three-spined stickleback would be avoided.

L014-34

Subsequent to the completion of the October 2004 Draft EIS/EIR, the Applicant completed surveys of the pipeline rights-of-way in accordance with California Department of Fish and Game protocol. Surveys included a wetland delineation survey that meets the California Coastal Commission and California Department of Fish and Game wetland definition, botanical and wildlife surveys for Federal and State listed species, a wintering waterfowl survey, a burrowing owl survey, and surveys to determine whether any oak trees would need to be removed during construction. Section 4.8 has been updated with the results of these surveys, and Section 4.8.4 contains updated mitigation measures. Additional preconstruction plant and wildlife surveys, specific to the final construction timeline and designated pipeline alignment, would be completed for special status species, federally listed species, or California protected species specified by the USFWS or the CDFG, to minimize the potential for causing mortality of local wildlife. However, for purposes of the impact analyses and resultant mitigation, all relevant species are presumed to exist in the vicinity of the proposed Project.

L014-35

Section 4.9.1 contains information on cultural resources surveys, including the results of an onshore pedestrian cultural resources survey and an assessment of national and state registry eligibility.

L014-36

See the response to Comment L014-3. The mitigation measures for impacts on onshore cultural resources have been revised (see Impact CULT-3) to include an Unanticipated Discovery Plan. In addition, the text of AM CULT-2a, Site Avoidance, has been

revised.

- Tables 4.9-2 to 4.9.6 identify impacts to California Site Number 56-150018, VEN-665, VEN-918, VEN-666, and VEN-13, however, page 4.9-21 states "the Project will result in no adverse impacts to documented prehistoric and historic site locations." The conclusion is not supported by the data. L014-36

Traffic

- Please provide some indication of the anticipated length of the disruption of traffic on each of the roadway segments which will be impacted by the project. Please indicate the extent of each roadway which will be impacted by construction (width of construction activities, anticipated number of lanes requiring closure) so we can judge the magnitude and extent of the construction impact. Information on the magnitude, extent and duration of the anticipated disruption of rail service should also be described. L014-37
- We would request that wording of MM Trans-1a be modified to require that the Transportation Management Plans be reviewed and approved by the affected local jurisdiction, at least 60 days prior to construction (i.e. not "or" the local jurisdiction, but "and" the local jurisdiction). L014-38
- The EIR/EIS should include evaluation of the potential impacts of the location of the staging areas. L014-39.1

Unavoidable Significant Adverse Impacts

- The discussion of unavoidable adverse impacts and the impact judgments in the Summary Table are not consistent. The Summary Table fails to identify unavoidable air quality, biological resource, and short-term traffic impacts. Similarly the discussion of unavoidable adverse impacts would appear to contradict the discussion of significant unavoidable impacts. L014-40

Growth-Inducing Impacts

- The analysis of growth-inducing impacts is inadequate. Under CEQA the courts have held that "construction of . . . utilities cannot be considered in isolation from the development it presages." The key question is whether the additional gas provision is designed to serve "development whose growth-inducing impacts have already been addressed in an EIR," or whether the proposed project (either alone or in combination with the cumulative natural gas projects) would accommodate growth in excess of that which have been previously analyzed (such as the regional growth forecasts). The EIR/EIS does not provide the necessary analysis to support its conclusions regarding the growth-inducing impacts, or lack thereof, of the project. L014-41

L014-36

The sites mentioned in the comment occur along Alternative 1. See Section 4.9.1 for updated information on cultural resources on the proposed and alternative routes and the results of the pedestrian survey.

L014-37

Section 4.17.4 discusses traffic impacts during Project construction.

L014-38

Section 4.17.3 discusses Project impacts on rail service.

L014-39

Section 4.17.4 has been revised in response to the comment.

L014-39.1

Section 4.17.4 addresses this topic.

L014-40

Section 5.2 and Table 6.1-1 have been updated and are consistent in the identification of unavoidable significant (Class I) impacts.

L014-41

Section 5.5 contains information on growth-inducing impacts.

Section 1.2.2 contains updated information on natural gas needs in the U.S. Forecast information has been obtained from the U.S. Department of Energy's Energy Information Agency. As discussed in Section 1.2.2, the Federal EIA provides policy-independent data, forecasts, and analyses to promote sound policy-making, efficient markets, and public understanding regarding energy and its interaction with the economy and the environment. Sections 1.2.2, 1.2.3, 1.2.4, 3.3.1, 3.3.2, and 4.10.1.3 contain information on the need for natural gas, the role and status of energy conservation and renewable energy sources, and the California Energy Action Plan. Sections 3.3.1 and 3.3.2 address conservation and renewable energy sources, within the context of the California Energy Commission's 2005 Integrated Energy Report and other State and Federal energy reports, as alternatives to replace additional supplies of natural gas.

Section 1.2.3 contains updated information on natural gas needs in California. Forecast information has been obtained from the California Energy Commission. As discussed in Section 1.2.3, the CEC's 2005 Integrated Energy Policy Report Committee Final Report provides the energy context for California's natural gas needs as identified in this EIS/EIR. The California Legislature

recognizes that the CEC is the State's principal energy policy and planning organization and that the CEC is responsible for determining the energy needs of California. These responsibilities are established in State law (the Warren-Alquist State Energy Resources Conservation and Development Act [Public Resources Code, Division 15]). The analysis in Sections 1.2.3 and 3.3.2 relies on up-to-date published material on natural gas energy demand in California. See additional discussion of the CEC Final Report in Section 4.10.1.3.

Again, thank you for the opportunity to comment on EIS/EIR. If you have any questions please feel free to contact either me or Kai Luoma, Senior Planner, at (661) 255-4330.

Sincerely,

Kenneth R. Puskamp
City Manager

KRP:KL:lep

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cc: Kenneth R. Puskamp, City Manager
Ken Striplin, Assistant City Manager
Robert Newman, Director of Building and Engineering
Darren Hernandez, Director of Administrative Services
Chris Daste, Director of Field Services
Lisa Hardy, Planning Manager
Mike Murphy, Intergovernmental Relations Officer
Gail Ortiz, Public Information Officer
Kai Luoma, Senior Planner
Susan O'Carroll, Environmental Consultant
State Senator Tom McClintock
State Senator George Runner
State Assembly Member Keith Richman, M.D.
Cheryl Karpowicz. Ecology and Environment, Inc.